IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4009 OF 2007

Nanakram Chiranjilal Agarwal .. Petitioner

Versus

Dayanand Duggappa Shetty .. Respondent

Mr.N.R.Bubna for petitioner

Mr.A.M.Joshi for respondent

CORAM : S.C.DHARMADHIKARI, J.

DATE : 16th August 2007.

P.C.

. Rule. Mr.Joshi waives service for respondents.

2. Petitioner is the original plaintiff who has filed Civil Suit No.103 of 2003 in the Court of Small Causes, Pune for a declaration that he is tenant in respect of the suit premises and that permanent injunction be granted in his favour restraining defendant - respondent before me, personally or through his servants and agents, from obstructing the possession of petitioner - plaintiff and his family members, so also, from the construction that the petitioner - plaintiff has carried out for his business of Kirana shop.

3. The suit was filed in the year 2003 and to be precise 19th March 2003. Written statement was filed by the respondent on 27th March 2003.

4. An application for amendment was made by the petitioner stating therein that after demolition of the suit property and acquisition for road widening in the remaining portion, the

respondent has constructed R.C.C. structure. Petitioner claims that he is entitled to seek reliefs not only in respect of the land but also the shop premises. In such circumstances, the plaint be allowed to be amended in terms of the schedule.

5. It was specifically contended that the amendment does not change cause of action nor the same can be said to be inconsistent, inasmuch as, due to the demolition and subsequent acquisition of the property/portion thereof, the petitioner will have to file a fresh suit. Amendment application was moved on 8th November 2006. On 6th December 2006, reply was filed by the respondent opposing the same. By the impugned order, amendment application has been rejected by Additional Judge, Small Causes Court Pune.

6. While rejecting this application, learned Judge has observed thus:-

"6. I want to mention that if the amendment sought by the plaintiff is allowed nature of suit, nature of relief and nature of the suit premises will be changed. Moreover, prejudice will be caused to the defendant. Because, admittedly new shop constructed by the defendant is not a suit premises. The suit premises is only the portion remains to be demolished by the Corporation. The suit is for declaration and injunction. If the application is allowed, nature of suit will be changed. Moreover, prejudice will be caused to the defendant. More, in the application the plaintiff has not mentioned the day on which the defendant carried construction. Therefore, it can not be ascertained as to whether the application is filed immediately after demolition of

> corporation or whether delay has been caused in filing the application. Moreover, if the application if allowed description of suit premises will also be changed. It will create complications."

7. The reasoning of the learned Judge cannot be said to be in accordance with the settled principles which have to be applied to such applications. All amendment applications have to be considered and granted liberally, provided they do not in any manner change the cause of action or raise pleas inconsistent with the reliefs. Further, the amendment application ought not to lack in bonafides. Applications which are in the nature of bringing on record subsequent events clarifying the position on site so also raising pleas which would obviate fresh proceedings and avoid multiplicity have also to be granted. Learned Judge seems to be unaware of these principles, as is clear from the reasoning

assigned by him.

8. It is not clear to me as to how the nature of the suit will be changed. Nature of the suit remains as a suit for declaration and permanent injunction. All the prayers are not being amended. All that is being contended is that an additional area would fall within the purview of the claim of plaintiff and that is how the amendment is moved. While making general observations and merely because claim for possession is made with regard to further area, the learned Judge could not have rejected the amendment application. His observations touch the merits of controversy. Mr.Joshi's apprehension that the Small Causes Court would not have any jurisdiction to decide the claim as incorporated now is also something which does not influence the decision on the amendment application. It is well settled that amendment ousting jurisdiction of the Court can also be

granted. In such circumstances, learned Judge's order is vitiated by a serious error apparent on the face of the record and can safely be termed as perverse. It ignores nature of the relief sought completely. One of the principles, while allowing the amendment, is to avoid multiplicity of proceedings. In such circumstances, I am of the view that the impugned order cannot be sustained.

9. Rule is accordingly made absolute. The order dated 16th January 2007 passed by the Additional Judge, Small Cause Causes Court Pune, below Exh.30 in Civil Suit No.103 of 2003 is quashed and set aside. Application for amendment Exh.30 is allowed. Amendments to be carried out within two weeks from today. Amended copy to be served within two weeks thereafter. Additional written statement, if any, to be filed within six weeks from the date of receipt of the amended plaint.

10. It is clarified that all observations made by me are for the purpose of allowing amendment application and shall not influence the court below while deciding the matter on merits. All contentions of both sides are expressly kept open. It would be open for respondent defendant to urge that inspite of amendment being carried out, lower court does not have necessary competence or jurisdiction to grant relief prayed for in the suit. Such contentions be decided uninfluenced by the present order. No costs.

(S.C.DHARMADHIKARI, J)